No. 640.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

ROCK DRILLING, BLASTING, ROADS, SEWERS, VIADUCTS, BRIDGES, FOUNDATIONS, EXCAVATIONS AND CONCRETE WORK ON ALL CONSTRUCTION, HOD CARRIERS', BUILDING AND COMMON LABORERS' LOCAL UNION NO. 17,

Petitioner,

against

MASON & HANGER COMPANY, INC.,

Respondent.

ROCK DRILLING, BLASTING, ROADS, SEWERS, VIADUCTS, BRIDGES, FOUNDATIONS, EXCAVATIONS AND CONCRETE WORK ON ALL CONSTRUCTION, HOD CARRIERS', BUILDING AND COMMON LABORERS' LOCAL UNION NO. 17,

Petitioner,

against

WALSH CONSTRUCTION COMPANY, INC.,

Respondent.

ROCK DRILLING, BLASTING, ROADS, SEWERS, VIADUCTS, BRIDGES, FOUNDATIONS, EXCAVATIONS AND CONCRETE WORK ON ALL CONSTRUCTION, HOD CARRIERS', BUILDING AND COMMON LABORERS' LOCAL UNION NO. 17,

Petitioner,

against

B. PERINI & SONS, INC.,

Respondent.

ROCK DRILLING, BLASTING, ROADS, SEWERS, VIADUCTS, BRIDGES, FOUNDATIONS, EXCAVATIONS AND CONCRETE WORK ON ALL CONSTRUCTION, HOD CARRIERS', BUILDING AND COMMON LABORERS' LOCAL UNION NO. 17,

Petitioner,

against

GEORGE M. BREWSTER & SON, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION.

FRANKLIN NEVIUS,
Attorney for Respondent
Mason & Hanger Company, Inc.

MARK F. HUGHES,
Attorney for Respondents
Walsh Construction Company, Inc.
and B. Perini & Sons, Inc.

WILLIAM H. WURTS,
Attorney for Respondent
George M. Brewster & Son, Inc.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS IN OPPOSITION.

I.

On March 28, 1955, this Court in its decision, *Association of Westinghouse Salaried Employees* v. *Westinghouse*

Electric Corp., No. 51-October Term 1954, held that Congress did not confer on the federal courts jurisdiction over suits by a union for accrued wages and that accordingly a union is not by virtue of its having been a party to a collective bargaining agreement, made subsequent to the enactment of the Taft-Hartley Act, entitled to sue in the federal courts for the recovery of individual wage claims of employees. In the cases at bar the union is attempting to sue for the recovery of individual tort claims of employees against their employer (none of which individually amounts to $3,000) which arose years prior to the enactment of the Taft-Hartley Law. Thus, the *Westinghouse* case not only disposes of any of the contentions on the merits which the petitioner might seek to assert but also of any semblance of plausibility to the petitioner's arguments that this Court should review the determination of the Court of Appeals.

II.

Nor does Petitioner's contention that it, as party to the collective bargaining agreements, has the right to maintain these actions under the provisions of Rule 17(a) F. R. C. P. (Petition, pp. 18-19) merit consideration as the basis of its application for certiorari. Petitioner is *not* suing for enforcement of the collective bargaining agreements or to recover damages for breach of them but, instead (as it has twice stipulated in each of the actions R. 9-10, 22-23, 39-40, 60, 77, 90, 109, 124-125), is seeking to recover damages sustained by its members (i. e. the individual claims of its individual members for torts alleged to have been committed prior to the making of the collective bargaining agreements).

III.

Even if it were conceded that Petitioner might sue for such torts, the suits still involve attempts to recover individual separate and distinct tort claims of hundreds of Petitioner's members. It is not disputed that such individual tort claims are in each instance less than the requisite jurisdictional amount. The requirement as to jurisdictional amount is subject to strict construction (*Healy* v. *Ratta,* 292 U. S. 263, at 270). It is well settled that individual claims, separate and distinct in character, may not be aggregated for jurisdictional amount (*Clark* v. *Paul Gray, Inc.,* 306 U. S. 583 at 588-589).

Nor is there any merit in Petitioner's argument that the alleged torts affected the making of a single contract and, accordingly, warrant aggregation. Even if claims can be said to stem from a single instrument, that does not warrant aggregation (*Pinel* v. *Pinel,* 240 U. S. 594) and the amount in controversy is to be measured not by the monetary result of determining the principle involved as to a number of individuals' separate and distinct claims, but by its pecuniary consequence to each of the individual claimants (*Thomson* v. *Gaskill,* 315 U. S. 442, at 447).

Allegations of tortious conduct or fraud in the making of the contract do not serve to change the separate and distinct character of the claims of the individual employees (*Hackner* v. *Guaranty Trust Co.,* 117 F. 2d 95, 2nd Cir., 1941, Cert. den. 313 U. S. 559).

Petitioner attempts to avoid the impact of the cases forbidding aggregation of claims for purposes of jurisdictional amount by repeatedly asserting that it is suing to recover a fund. As Judge Medina pointed out in the

opinion of the court below, there is no fund (217 F. 2d 687, 695).

Nor is the jurisdictional amount established by the allegations of the amended complaints that the amount in controversy is in excess of $3,000, as Petitioner asserts (Petition, p. 7). (*Clark* v. *Paul Gray, Inc., supra,* at p. 588).

The petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANKLIN NEVIUS,
Attorney for Respondent Mason & Hanger Company, Inc.

MARK F. HUGHES,
Attorney for Respondents Walsh Construction Company, Inc. and B. Perini & Sons, Inc.

WILLIAM H. WURTS,
Attorney for Respondent George M. Brewster & Son, Inc.